

RESOLUTION 44-2009

RESOLUTION RELATING TO \$249,999.00 BOND FOR THE JEFFERSON COUNTY (MOONLIGHT RIDGE) RURAL IMPROVEMENT DISTRICT NO. 2511; FIXING THE FORM AND DETAILS AND PROVIDING FOR THE EXECUTION AND DELIVERY THEREOF AND SECURITY THEREFOR

BE IT RESOLVED by the County Commission (the "Commission") of Jefferson County as follows:

Section 1. Recitals. It is hereby found, determined and declared as follows:

1.01. Creation of the District. By adopting the Resolution of Intention, this Commission declared its intention to create the following Rural Improvement District No. 2511:

Moonlight Ridge Rural Improvement District No. 2511 (the "District"), for the purpose of making local improvements (the "Improvements") for the special benefit of the District, in accordance with the provisions of Montana Code Annotated, Title 7, Chapter 12, Part 21 (the "Act"). This Commission by adopting the Resolution, did create the District and order the proposed Improvements in accordance with the Resolution of Intention.

1.02. Costs. The costs and expenses connected with and incidental to the formation of the District to the County, including costs of preparation of plans, specifications, maps, profiles, engineering superintendence and inspection, preparation of assessment rolls, expenses of making the assessments, the cost of work and materials under the construction contract and all other costs and expenses (hereafter, the "Projects") will be levied and assessed upon the assessable real property within the District on the basis described in the Resolution of Intention. This Commission has jurisdiction and is required by law to levy and assess such amounts, to collect such special assessments and credit the same to the rural improvement district fund created for the District, which fund is to be maintained on the official books and records of the County separate from all other funds, for the payment of principal and interest when due on the Bond herein authorized.

1.03. Board of Investments; INTERCAP Revolving Program. Pursuant to Montana Code Annotated, Section 2-15-1808 and Title 17, Chapter 5, Part 16 as amended, and in accordance with the Indenture of Trust, dated as of March 1, 1991 as amended and supplemented (the "Indenture"), between the Board of Investments of the State of Montana (the "Board of Investments") and U.S. Bank Trust National Association MT (formerly known as First Trust Company of Montana National Association), as Trustee (with any successor trustee thereunder), (the "Trustee"), the Board of Investments has established its INTERCAP Revolving Program (the "INTERCAP Program") pursuant to which the Board of Investments will issue and remarket, from time to time, its Annual Adjustable Rate Tender Option Municipal Finance Consolidation Act Bonds (INTERCAP Revolving Program)(the "Board Bonds"), for the purpose of making loans to local government units to finance or refinance the acquisition and installation of equipment, personal and real property improvements, to provide temporary financing of projects or for other authorized corporate purposes of a local government unit. All Board Bonds issued under the Indenture are secured equally and ratably thereunder and bear interest at a rate that is adjustable annually, effective for the period commencing on each March 1st and ending on the last day of the next succeeding February.

1.04. Sale and Issuance of Bond. For the purpose of financing the costs and expenses of making the Improvements, which are to be assessed against the property within the District as provided in the Resolution of Intention, this Commission hereby authorizes the negotiated sale of a rural improvement district bond in the principal amount of \$249,999.00 (the "Bond") to the Board of Investments, in accordance with the provisions of Montana Code Annotated, Section 7-12-2172(2), upon the further terms set forth in this Resolution. The Board will fund its purchase of the Bond from the proceeds of a series of Board Bonds or from loan payments made with respect to loans funded from such proceeds.

The Bond may bear a variable rate of interest and be sold at a private negotiated sale since the principal amount of the Bond does not exceed \$500,000.00

1.05. Recitals. All acts, conditions and things required by the Constitution and laws of the State of Montana, including Montana Code Annotated, Title 7, Chapter 12, Part 21, in order to make the Bond a valid and binding special obligation in accordance with its terms and in accordance with the terms of this Resolution have been done, do exist, have happened and have been performed in regular and due form, time and manner as so required.

Section 2. The Bond.

2.01. Principal Installments, Maturities, Denominations, Date Interest Rates. For the purpose of paying the costs and expenses incurred in construction of the Improvements, and in anticipation of the collection of special assessments to be levied therefor, and in accordance with the sale described in Section 1.04, the County shall forthwith issue and deliver to the Board of Investments the Bond payable solely from the Rural Improvement District Fund (the "District Fund") and denominated "Jefferson County Rural Improvement District, Bond No. 2009-2.

<u>District Name</u>	<u>District Number</u>	<u>Bond Number</u>
Moonlight Ridge	2511	2009-2

The Bond shall be in the principal amount of \$249,999.00, shall be issued as a fully registered bond numbered 2009-2, shall be dated, as originally issued, and registered as of the date of delivery to the Board of Investments, and principal installments thereof shall mature on February 15, 2025, in the years and principal amounts set forth on Schedule A attached, and shall bear interest from the date of delivery of the Bond at the rate per annum equal to the Loan Rate (as hereinafter defined), as determined from time to time, for the periods hereinafter described.

Interest on the Bond shall be payable on each February 15th and August 15th, commencing August 15, 2010 to the owners of record thereof as such appear on the bond register on the date of payment, whether or not such day is a business day. The Bond shall represent all the principal installments of the issue.

For purposes of this Resolution, "Loan Rate" shall mean, for the period from the date of original registration of the Bond until February 15, 2010, the rate of three and twenty-five hundredths percent (3.25%) per annum, and, for each twelve-month or shorter period thereafter during the term of the Bond commencing on February 16th and concluding on February 15th in the next succeeding year, an annual interest rate specified by the Trustee and calculated as provided under the Indenture, which rate generally shall be equal to the sum of (i) the interest rate on the Board Bonds during such period (which interest rate may not exceed fifteen percent (15%) per annum) plus (ii) a rate, not to exceed one and one-half percent (1.50%) per annum, sufficient to produce the amount necessary to pay the County's share of Program Expenses (as hereinafter defined). For the purposes of this Section 2.01, "Program Expenses" shall mean the expenses of the Program, including (without limitation) the fees and expenses of the Trustee and such other fees and expenses of the Program or of the Board of Investments relating thereto as shall be approved by the Board of Investments. Under the Indenture, the Trustee is to calculate and notify the County, within 20 days after each March 1st, of the interest rate on the Bond for the period commencing on the preceding February 16th.

2.02. Negotiability, Transfer and Registration. The Bond shall be fully registered as to both principal and interest, and shall be initially registered in the name of and payable to the Board of Investments. While so registered, principal of and interest on the Bond shall be payable to the U.S. Bank Trust National Association of MT (formally known as First Trust Company of Montana National Association), Corporate Trust Services, 50 Livingston Avenue, St. Paul, MN 55107 or such other place as may be designated by the Board of Investments in writing and delivered to the County. The Bond shall be negotiable, subject to the provisions for registration and transfer contained in this section. No transfer of the Bond shall be valid unless and until (1) the holder, or duly authorized attorney or legal representative, has executed the form of assignment appearing on the Bond, and (2) the County Treasurer of the County or any successor financial institution or trust company which this Commission may appoint to so act as Bond Registrar (the "Registrar"), has duly noted the transfer on the Bond and recorded the transfer on the registration books of the Registrar. The Registrar may, prior to noting and recording the transfer, require appropriate proof of the transferor's authority and the genuineness of the transferor's signature. All costs of such registration and transfer

shall be paid by the County, except that the County may charge the holder for any tax, fee or other governmental charge imposed upon or with respect to the transfer of the Bond. The County shall be entitled to deem and treat the person in whose name the Bond is registered as the absolute owner of the Bond for all purposes, notwithstanding any notice to the contrary, and all payments to the registered holder shall be valid and effectual to satisfy and discharge the County's liability upon such Bond to the extent of the sum or sums so paid.

2.03. Execution and Delivery. The Bond shall be executed on behalf of the County by the manual signatures of the Commission Chair and the County Clerk. Any or all of such signatures may be affixed at or prior to the date of delivery of the Bond. The Bond shall be sealed with the corporate seal of the County. In the event that any of the officers who shall have signed the Bond shall cease to be officers of the County before the Bond is issued or delivered, their signatures shall remain binding upon the Borrower. Conversely, the Bond may be signed by an authorized official who did not hold such office on the date of adoption of this Resolution. The Bond shall be delivered to the Board of Investments, or its attorney or legal representative. The Bond shall be registered in the office of the County Clerk and the County Treasurer.

2.04. Prepayment, when Mandatory Redemption Required. The principal installments of the Bond are subject to mandatory redemption in order of registration on any interest payment date if, after paying all principal and interest then currently due on the Bond, there are monies available in or to the credit of the Rural Improvement District Fund of the County, either from the prepayment of assessments levied in the District or from surplus proceeds of the Bond not required to pay costs of the Improvements, for the redemption thereof, and in the manner provided for the redemption of the same. The principal installments of the Bond are subject to redemption at the option of the County from other sources of funds available therefor on any interest payment date. The redemption price is equal to the amount of the principal installment or installments of the Bond to be redeemed plus interest accrued thereon to the date of redemption, without premium. The date of redemption shall be fixed by the County Treasurer, who shall give notice by first class mail, postage prepaid, to the owner or owners of the Bond at their address shown on the bond register, of the numbers of the principal installments to be redeemed and the date on which payment will be made, which date shall not be less than ten days after the date of mailing notice, on which date so fixed interest shall cease. On the date so fixed interest on the principal installments of the Bond so redeemed shall cease to accrue.

2.05. Form. The Bond shall be drawn in substantially the form set forth in Exhibit A hereto, and by this reference made a part hereof, with such modifications as are permitted by the Act.

Section 3. District Fund; Assessments.

3.01. District Fund. There is hereby created and established the District Fund designated as the "Rural Improvement District Fund", which shall be maintained by the County Treasurer on the books and records of the County separate and apart from all other funds of the County. Within the District Fund there shall be maintained two separate accounts, designated as the "Principal Account" and "Interest Account," respectively.

3.02. Principal Account and Interest Account. Money in the Principal Account and the Interest Account shall be used only for payment of the principal of and interest on the Bond as such payments become due or to redeem prior installments of the Bond.

Upon collection of the installment of principal and interest due on November 30 and May 31 of each fiscal year on the special assessments to be levied with respect to the Improvements, the County Treasurer shall credit to the Interest Account so much of said special assessments as is collected as interest and the balance thereof to the Principal Account. Any installment of any special assessment paid prior to its due date with interest accrued thereon to the Principal succeeding interest payment date shall be credited with respect to principal and interest payments in the same manner as other assessments are credited to the District Fund. All money in the Interest Account and the Principal Account shall be used first to pay interest due, and any remaining money shall be used to pay the Bond then due and, if money is available, to redeem the Bond or principal installments thereof in accordance with Section 2.04. Redemption of Bond shall be in order of the principal installments, and interest shall be paid as accrued thereon to the date of redemption, in accordance with the provisions of Montana Code Annotated, Section 7-12-2174.

3.03. Loans from Revolving Fund. The Commission shall annually or more often if necessary issue an order authorizing a loan or advance from the Rural Improvement District Revolving Fund of the County (the "Revolving Fund") to the District Fund in an amount sufficient to make good any deficiency then existing in any Interest Account and shall issue an order authorizing a loan or advance from the Revolving Fund to the District Fund in an amount sufficient to make good any deficiency then existing in the Principal Account in such order and in each case to the extent that money is available in the Revolving Fund. A deficiency shall be deemed to exist in the Principal Account or the Interest Account if the money on deposit therein on any February 1 or August 1 (excluding amounts in the Principal Account representing prepaid special assessments) is less than the amount necessary to pay principal of the Bond due, and interest on the Bond payable, on the next succeeding interest payment date.

Pursuant to Resolution No. 11-2007, the County has undertaken and agreed to provide funds for the Revolving Fund by levying such tax or making such loan from the General Fund as authorized by Montana Code Annotated, Section 7-12-2182. In the event that the balance on hand in the Revolving Fund fifteen days prior to any date when interest is due on Rural Improvement District bonds or warrants of the County is not sufficient to make good all deficiencies then existing in the Rural Improvement District Fund for which the County has covenanted to make loan from the Revolving Fund, then, pursuant to 7-12-2183 MCA, the balance on hand in the Revolving Fund shall be allocated to the funds of the Rural Improvement District in which such deficiencies then exist in proportion to the amounts of the deficiencies on the respective dates of receipt of such money, until all interest accrued on such rural improvement district bonds or warrants of the County has been paid. On any date when all accrued interest on rural improvement district bonds and warrants of the County payable from funds for which the County has covenanted to make loans from the Revolving Fund has been paid, any balance remaining in the Revolving Fund shall be lent or advanced to the Rural Improvement District Fund for payment and redemption of bonds to the extent the district funds are deficient for such purpose, and, if money in the Revolving Fund is insufficient therefor, pro rata, in an amount proportionate to the amount of such deficiency.

Section 4. Covenants and Representations. The County covenants and agrees with the owners from time to time of the Bond that until the Bond and interest thereon are fully paid:

4.01. Compliance with the Resolution. The County will hold the District Fund and the Revolving Fund as trust funds, separate and apart from all of its other funds, and the County, its officers and agents, will comply with all covenants and agreements contained in this Resolution. The provisions hereinabove made with respect to the District Fund and the Revolving Fund are in accordance with the undertaking and agreement of the County made in connection with the sale of the Bond as set forth in Section 1.04.

4.02. Construction of Improvements. The County has taken all steps necessary to enforce the provisions of the construction contracts and bond relating to the Improvements and to ensure the completion of the Improvements for the benefit of the District in accordance with the plans and specifications and within the time therein provided, and has paid all costs thereof promptly as incurred and allowed, out of the District Fund. All awards of contracts have complied with the applicable bid and award statutes.

4.03. Levy of Assessments. The County will do all acts and things necessary for the final and valid levy of special assessments upon all assessable real property within the boundaries of the District in accordance with the Constitution and laws of the State of Montana and the Constitution of the United States in an aggregate principal amount not less than the original principal amount of the Bond. Such special assessments shall be levied on the basis or bases prescribed in the Resolution and shall be payable in semiannual installments during the term of the Bond. Each special assessment shall bear interest on the whole amount remaining unpaid at an annual rate equal to the sum, determined as of the date an installment of the special assessment is levied each fiscal year, of: (i) the then current Loan Rate, plus (ii) one percent (1.00%) per annum, plus (iii) if and to the extent that the Loan Rate is then less than 15% per annum (the maximum interest rate on the Bond), an additional one percent (1.00%) per annum, interest being payable with principal installments. The assessments to be levied will be payable on the 30th day of November and on the 31st day of May in each fiscal year during the term of the Bond and, if not theretofore paid, shall become delinquent on such date unless paid in full. The first partial payment of each assessment shall include interest on the entire assessment from the date of original registration of the Bond to the first interest payment date thereon, and each subsequent partial payment shall include interest for six months on that payment and the then remaining balance of the special assessment. The assessments shall constitute a lien upon and against the property against which they

are made and levied, which lien may be extinguished only by payment of the assessment with all penalties, cost and interest as provided in Montana Code Annotated, Section 7-12-2168. No tax deed issued with respect to any lot or parcel of land shall operate as payment of any installment of the assessment thereon which is payable after the execution of such deed, and any tax deed so issued shall convey title subject only to the lien of said future installments, as provided in Montana Code Annotated, Section 15-18-214.

4.04. Reassessment. If at any time and for whatever reason any special assessment or tax herein agreed to be levied is held invalid, the County and this Commission, its officers and employees, will take all steps necessary to correct the same and to reassess and re-levy the same, including the ordering of work, with the same force and effect as if made at the time provided by law, ordinance or resolution relating thereto, and will reassess and re-levy the same with the same force and effect as an original levy thereof, as authorized in Montana Code Annotated, Section 7-12-2165. Any special assessment, or reassessment or re-levy shall, so far as is practicable, be levied and collected as it would have been if the first levy had been enforced including the levy and collection of any interest accrued on the first levy.

If proceeds of the Bond, including investment income thereon, are applied to the redemption of principal installments thereof, as provided in Montana Code Annotated, Sections 7-12-2173 and 7-12-2174, or if refunding bonds are issued and the principal amount of the outstanding bond of the District is decreased or increased, the County will reduce or increase, respectively, the assessments levied in the District and then outstanding pro rata by the principal amount of such prepayment or the increment above or below the outstanding principal amount of bond represented by the refunding bonds in accordance with the provisions of Montana Code Annotated, Sections 7-12-2165.

4.05. Absence of Litigation. There is now no litigation pending or, to the best knowledge of the County, threatened questioning the validity or regularity of the creation of the District, or the undertaking and agreement of the County to levy special assessments therefor and to make good any deficiency in the collection thereof through the levy of taxes for and the making of advances from the Revolving Fund, or the right and power of the County to issue the Bond in any manner questioning the existence of any condition precedent to the exercise of the County's powers in these matters. If any such litigation should be initiated or threatened, the County will forthwith notify in writing the Board of Investments, and will furnish the Board of Investments a copy of all documents, including pleadings, in connection with such litigation.

4.06. Waiver of Penalty and Interest. The County covenants not to waive the payment of penalty or interest on delinquent assessments levied on property in the District for costs of the Improvements.

4.07. Additional Pledge of Revolving Fund. The County agrees that so long as any principal or interest on the Bond is outstanding and unpaid, that it will not pledge to make a loan from the County Revolving Fund as authorized in 7-12-2183 MCA for the benefit of any additional County improvement district or any additional project within a currently established rural improvement district without the Board of Investments' written consent.

Section 5. Mandatory Contribution to Revolving Fund As provided in 7-12-2182, MCA, the County must provide an amount equal to 5% of the principal amount of any bonds or warrants to be issued if the bonds or warrants are secured by the Revolving Fund. The County will deposit an amount equal to 5% of the principal amount of the Bond advanced into the Revolving Fund.

Section 6. Conclusive Findings as Required by Statute By adopting this Resolution, the County authorizes the issuance of the Bond and its sale to the Board of Investments. The County Revolving Fund is pledged as part of the security of the Bond. As required by 7-12-2185 MCA, the County makes the express finding that the creation of the District, the authorization of bonded indebtedness, and the pledge of the Revolving Fund are in the public interest after the Commission has considered the following and other material factors as required by law:

a) the estimated market value of the lots, parcels, or tracts included in the District at the time that the District is created in comparison to the estimated market value of the value of lots, parcels, or tracts after the improvements are made;

- b) the diversity of ownership of property in the District;
- c) the amount of the special assessments proposed to be levied against each lot, parcel, or tract in the District in comparison to the estimated market value of the lot, parcel or tract after the improvements are made;
- d) the amount of any outstanding special assessments against the property in the District;
- e) the amount of delinquencies in the payment of outstanding special assessments or property taxes levied against property in the District; and
- f) the public benefit of the improvements proposed to be financed.

Section 7. Authentication of Transcript. The officers of the County are hereby authorized and directed to furnish to the Board of Investments certified copies of all proceedings relating to the issuance of the Bond and such other certificates and affidavits as may be required to show the right, power and authority of the County to issue the Bond, and all statements contained in and shown by such instruments, including and heretofore furnished, shall constitute representations of the County as to the truth of the statements purported to be shown thereby.

Section 8. Discharge. When the liability of the County on the Bond has been discharged as provided in Section 2, all pledges, covenants and other rights granted by this Resolution to the owners of the Bond shall cease.

PASSED by the Commission of the County of Jefferson, this 8th day of December, 2009.

ATTEST:

BONNIE RAMEY
CLERK AND RECORDER

TOMAS E. LYTHGOE, CHAIR

KEN WEBER, COMMISSIONER

DAVE KIRSCH, COMMISSIONER